

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

AMOS BURGER,

Plaintiff,

v.

**NANCY A. BERRYHILL, acting
Commissioner of Social Security,**

Defendant.

No. 6:14-cv-00112-AC

OPINION AND ORDER

MOSMAN, J.,

On August 11, 2017, Magistrate Judge Acosta issued his Findings and Recommendation (F&R) [31], recommending that Amos Burger's Unopposed Motion for Attorney Fees [27] should be GRANTED. No objection was filed.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of

the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Acosta's recommendation and I ADOPT the F&R [31] as my own opinion.

Attorneys' fees in the amount of \$27,772.75 are hereby awarded to Attorney Tim Wilborn pursuant to 42 U.S.C. § 406(b). Previously, this court awarded fees pursuant to the Equal Access To Justice Act (EAJA), 28 U.S.C. § 2412. When issuing the § 406(b) check, the agency is directed to subtract the amount of the EAJA fee previously received by the attorney and to send to Plaintiff's attorney, Tim Wilborn, at the address above, the balance of \$19,765.43, minus any user fee. Any amount withheld after all administrative and court attorney fees are paid should be released to the claimant.

IT IS SO ORDERED.

DATED this 6th day of September, 2017.

/s/ Michael W. Mosman

MICHAEL W. MOSMAN
Chief United States District Judge